

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,)	CR. NO. 3:12-729 (CMC)
)	
v.)	OPINION and ORDER
)	
Freddie Grant,)	
)	
Defendant.)	
_____)	

This matter is before the court on Defendant's motion to correct sentence under 28 U.S.C. § 2255, arguing that in light of the Supreme Court's holding in *Johnson v. United States*, __ U.S. __, 135 S.Ct. 2551 (2015), Defendant is no longer an armed career criminal and should be resentenced. ECF No. 147. Specifically, the challenged predicate offense at issue is Defendant's conviction for Kidnapping while in military service, a violation of the Uniform Code of Military Justice, Article 134. *Id.* at 1. Initially, the Government filed a Motion for Summary Judgment. ECF Nos. 152, 153. Defendant filed a reply. ECF No. 154.

The court then entered an Order holding this case in abeyance pending a Fourth Circuit decision in *United States v. Walker*, No. 15-4301, as that case considered whether a violation of the federal kidnapping statute could be considered a "crime of violence" under 18 U.S.C. § 924(c). On August 9, 2019, the Fourth Circuit in a published opinion decided the federal kidnapping statute could not qualify as an underlying offense for a § 924(c) violation under the force clause of § 924(c)(1)(A), as it could be committed by means that could be accomplished without the use of force. *United States v. Walker*, __ F.3d __, 2019 WL 3756052 (4th Cir. 2019). This court then, in accordance with the stay order, instructed the parties to confer and inform the court whether they believed further briefing was necessary. ECF No. 156. The parties then filed a consent

supplemental memorandum, noting they have conferred and do not believe further briefing is necessary as *Walker* is dispositive of the sole issue in the instant case. ECF No. 157. Therefore, as the Government agrees *Walker* is dispositive, Defendant is entitled to relief.

The court **grants** the motion for relief under 28 U.S.C. § 2255. The Judgment Order as to Freddie Grant in CR 3:12-729 filed April 19, 2013, is hereby **vacated**, and this matter is set for resentencing on **November 20, 2019 at 2:00pm**. The Government's motion for summary judgment (ECF No. 152) is denied as moot.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
September 9, 2019